

114TH CONGRESS  
1ST SESSION

# H. R. 2190

To amend title 10, United States Code, to improve procedures for legal justice for members of the Armed Forces, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2015

Ms. SPEIER introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title 10, United States Code, to improve procedures for legal justice for members of the Armed Forces, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Legal Justice for  
5 Servicemembers Act of 2015”.

1   **SEC. 2. IMPROVEMENTS TO WHISTLEBLOWER PROTECTION**

2                 **PROCEDURES.**

3                 (a) MODIFICATION OF ACTIONS TREATABLE AS PRO-  
4   HIBITED PERSONNEL ACTIONS.—Paragraph (2) of sub-  
5   section (b) of section 1034 of title 10, United States Code,  
6   is amended to read as follows:

7                 “(2) The following actions shall be considered for the  
8   purposes of this section to be a personnel action prohibited  
9   by this subsection:

10                 “(A) Any action prohibited by paragraph (1)  
11                 (including the threat to take any unfavorable action,  
12                 the withholding or threat to withhold any favorable  
13                 action, making or threatening to make a significant  
14                 change in the duties or responsibilities of a member  
15                 of the armed forces not commensurate with the  
16                 member’s grade, a retaliatory investigation, and the  
17                 failure of a superior to respond to retaliatory action  
18                 or harassment by one or more subordinates taken  
19                 against a member of which the superior knew or  
20                 should have known).

21                 “(B) Any other action that could be reasonably  
22                 understood as an attempt to dissuade a member of  
23                 the armed forces from making or preparing a com-  
24                 munication, or participating in any other activity,  
25                 described in paragraph (1).”.

1           (b) OPTION OF MEMBER CONCERNED TO DECLINE  
2 DELEGATION OF INVESTIGATION BY DoD IG TO MILI-  
3 TARY DEPARTMENT IG.—Subparagraph (D) of subsection  
4 (c)(4) of such section is amended in the second sentence  
5 by inserting before the period the following: “unless the  
6 member submitting the allegation declines the delegation”.

7           (c) TEMPORARY STAY OF PERSONNEL ACTIONS.—

8 Subsection (c)(4) of such section is further amended—

9               (1) by redesignating subparagraph (E) as sub-  
10 paragraph (F); and

11               (2) by inserting after subparagraph (D) the fol-  
12 lowing new subparagraph (E):

13               “(E)(i) If the Inspector General makes a preliminary  
14 determination in an investigation under subparagraph (D)  
15 that there are reasonable grounds to believe that a per-  
16 sonnel action prohibited by subsection (b) has occurred  
17 and the personnel action will result in an immediate hard-  
18 ship to the member alleging the personnel action, the In-  
19 spector General may impose a stay of the personnel action  
20 of not more than 90 days in order to prevent undue hard-  
21 ship to the member.

22               “(ii) If the Inspector General has not completed the  
23 investigation described in clause (i) upon the expiration  
24 of the stay of the personnel action with respect to a mem-  
25 ber imposed by the Inspector General under that clause,

1 the Secretary of the military department concerned or the  
2 Secretary of Homeland Security, as applicable, may con-  
3 tinue the stay of the personnel action with respect to the  
4 member for such additional time as is required for the  
5 completion of the investigation by the Inspector General.”.

6       (d) PERIODIC NOTICE TO MEMBERS ON PROGRESS  
7 OF IG INVESTIGATIONS.—Paragraph (3) of subsection (e)  
8 of such section is amended to read as follows:

9           “(3)(A) Not later than 180 days after the commence-  
10 ment of an investigation of an allegation under subsection  
11 (c)(4), and every 90 days thereafter until the transmission  
12 of the report on the investigation under paragraph (1) to  
13 the member concerned, the Inspector General conducting  
14 the investigation shall submit a notice on the investigation  
15 described in subparagraph (B) to the following:

16           “(i) The member.

17           “(ii) The Secretary of Defense.

18           “(iii) The Secretary of the military department  
19 concerned, or the Secretary of Homeland Security in  
20 the case of a member of the Coast Guard when the  
21 Coast Guard is not operating as a service in the  
22 Navy.

23           “(B) Each notice on an investigation under subpara-  
24 graph (A) shall include the following:

1           “(i) A description of the current progress of the  
2 investigation, including the number of witnesses  
3 interviewed and the number of documents reviewed.

4           “(ii) An estimate of the time remaining until  
5 the completion of the investigation and the trans-  
6 mittal of the report required by paragraph (1) to the  
7 member concerned.”.

8           (e) IG RECOMMENDATIONS REGARDING DISPOSITION  
9 OF COMPLAINTS.—Paragraph (4) of subsection (e) of such  
10 section is amended to read as follows:

11          “(4) The report on the results of the investigation  
12 shall contain the following:

13          “(A) A thorough review of the facts and cir-  
14 cumstances relevant to the allegation and the com-  
15 plaint or disclosure.

16          “(B) The documents acquired during the course  
17 of the investigation, including summaries of inter-  
18 views conducted.

19          “(C) A recommendation as to the disposition of  
20 the complaint.

21          “(D) Recommendations, made in consultation  
22 with the appropriate Judge Advocate General, for  
23 disciplinary actions against the person who com-  
24 mitted the prohibited personnel action, against a su-

1       perior who failed to address such action of which the  
2       superior knew or should have known, or both.”.

3       (f) ACTIONS IN CASE OF VIOLATIONS.—Subpara-  
4 graph (B) of subsection (f)(3) of such section is amended  
5 to read as follows:

6           “(B) refer the report to the appropriate board  
7       for the correction of military records for further re-  
8       view under subsection (g) unless the member or  
9       former member requests, in writing, during the 30-  
10      day period beginning on the date of the making of  
11      the determination, that the report not be so re-  
12      ferred.”.

13       (g) CORRECTION OF RECORDS.—Subsection (g) of  
14 such section is amended—

15           (1) by redesignating paragraphs (3) through  
16      (6) as paragraphs (4) through (7), respectively;  
17           (2) by striking paragraph (2) and inserting the  
18      following new paragraphs (2) and (3):

19           “(2) In resolving an application described in para-  
20 graph (1) for which there is a report of the Inspector Gen-  
21 eral under subsection (e)(1), a correction board—

22           “(A) shall review the report of the Inspector  
23 General;

24           “(B) may request the Inspector General to  
25 gather further evidence;

1           “(C) may receive oral argument, examine and  
2       cross-examine witnesses, and take depositions; and

3           “(D) if requested by the member or former  
4       member, in writing, shall hold an evidentiary hear-  
5       ing.

6           “(3) In resolving an application described in para-  
7       graph (1) for which there is no final action of the Inspec-  
8       tor General within 365 days after the claimant submits  
9       an application to the Inspector General, the correction  
10      board—

11          “(A) may receive oral argument, examine and  
12       cross-examine witnesses, and take depositions; and

13          “(B) if requested by the member or former  
14       member, in writing, shall hold an evidentiary hear-  
15       ing.”; and

16           (3) in paragraph (7), as redesignated by para-  
17       graph (1) of this subsection, by inserting before the  
18       period at the end the following: “, against a superior  
19       who failed to address such action of which the supe-  
20       rior knew or should have known, or both”.

21           (h) BURDENS OF PROOF.—Such section is further  
22      amended—

23           (1) by redesignating subsections (h), (i), and (j)  
24       as subsections (i), (j), and (k), respectively; and

(2) by inserting after subsection (g) the following new subsection (h):

3       “(h) BURDENS OF PROOF.—The burdens of proof  
4 specified in section 1221(e) of title 5 shall apply in any  
5 investigation conducted by an Inspector General, in any  
6 board for the correction of military records, and in any  
7 review conducted by the Secretary of Defense and the Sec-  
8 retary of Homeland Security, under this section.”.

9           (i)       CONFORMING       AMENDMENT.—Subsection  
10 (b)(1)(B)(ii) of such section is amended by striking “sub-  
11 section (i)” and inserting “subsection (k)”.

12 (j) UNIFORM STANDARDS FOR IG INVESTIGATIONS  
13 OF PROHIBITED PERSONNEL ACTIONS AND OTHER MAT-  
14 TERS.—

(A) The investigation of allegations of prohibited personnel actions under section 1034 of title 10, United States Code (as amended by this section), by the Inspector General, the Inspectors General of the military departments, and the Inspector General of the Department of Homeland Security.

5                         (2) USE.—Commencing 180 days after pre-  
6 scription of the standards required by paragraph  
7 (1), the Inspectors General referred to in that para-  
8 graph shall comply with such standards in the con-  
9 duct of investigations described in that paragraph  
10 and in the training of the staffs of such Inspectors  
11 General in the conduct of such investigations.

12 SEC. 3. IMPROVEMENTS TO AUTHORITIES AND PROCE-  
13 DURES FOR THE CORRECTION OF MILITARY  
14 RECORDS.

15       (a) REQUIREMENT FOR CORRECTION OF MILITARY  
16 RECORDS.—Paragraph (1) of subsection (a) of section  
17 1552 of title 10, United States Code, is amended in the  
18 first sentence by striking “may correct” and inserting  
19 “shall correct”.

20           (b) AJS AS PRESIDING OFFICERS AT MEETINGS OF  
21       BOARDS FOR CORRECTION OF MILITARY RECORDS.—  
22       Such subsection is further amended—

23 (1) by redesignating paragraphs (3) and (4) as  
24 paragraphs (5) and (8), respectively; and

1                             (2) by inserting after paragraph (2) the fol-  
2                             lowing new paragraph (3):

3                 “(3) Each meeting of a board under this subsection,  
4 including any evidentiary hearing under paragraph (6),  
5 shall, to the extent practicable, have as its presiding officer  
6 an administrative judge serving on a part-time basis for  
7 that purpose under a contract with the Secretary con-  
8 cerned for that purpose.”.

9                 (c) QUALIFICATIONS AND TERMS OF SERVICE ON  
10 BOARDS.—

11                 (1) IN GENERAL.—Such subsection is further  
12 amended by inserting after paragraph (3), as in-  
13 serted by subsection (b)(2) of this section, the fol-  
14 lowing new paragraph (4):

15                 “(4)(A) The members of each board under this sub-  
16 section shall be individuals who, by demonstrated ability,  
17 background, training, or experience are especially qualified  
18 to carry out the functions of a board under this section.  
19 No member of a board may hold another office or position  
20 in the Federal Government except as otherwise provided  
21 by law.

22                 “(B) The term of service of an individual on a board  
23 may not exceed five years.”.

24                 (2) APPLICATION OF TERM OF SERVICE LIMITA-  
25 TION TO MEMBERS SERVING ON DATE OF ENACT-

1        MENT.—For purposes of the application of para-  
2        graph (4)(B) of subsection (a) of section 1552 of  
3        title 10, United States Code (as amended by para-  
4        graph (1) of this subsection), to individuals serving  
5        on boards for the correction of military records as  
6        of the date of the enactment of this Act, the term  
7        of service of such individuals on such boards shall be  
8        deemed to have commenced on the date of the enact-  
9        ment of this Act.

10      (d) PROCEDURES OF BOARDS.—Paragraph (5) of  
11     such subsection, as redesignated by subsection (b)(1) of  
12     this section, is further amended—

13                  (1) by inserting “(A)” after “(5)”; and  
14                  (2) by adding at the end the following new sub-  
15        paragraphs:

16                  “(B) If a board makes a preliminary determination  
17        that a claim under this section lacks sufficient information  
18        or documents to support the claim, the board shall notify  
19        the claimant, in writing, indicating the specific informa-  
20        tion or documents necessary to make the claim complete  
21        and reviewable by the board.

22                  “(C) If a claimant is unable to provide military per-  
23        sonnel or medical records applicable to a claim under this  
24        section, the board shall make reasonable efforts to obtain  
25        the records. A claimant shall provide the board with docu-

1       mentary evidence of the efforts of the claimant to obtain  
2       such records. The board shall inform the claimant of the  
3       results of the board's efforts, and shall provide the claim-  
4       ant copies of any records so obtained upon request of the  
5       claimant.

6           “(D) Any request for reconsideration of a determina-  
7       tion of a board under this section, no matter when filed,  
8       shall be reconsidered by a board under this section if sup-  
9       ported by materials not previously presented to or consid-  
10       ered by the board in making such determination.”.

11           (e) EVIDENTIARY HEARINGS ON CERTAIN CLAIMS.—  
12       Such subsection is further amended by inserting after  
13       paragraph (5), as redesignated by subsection (b)(1) of this  
14       section and amended by subsection (d) of this section, the  
15       following new paragraph (6):

16           “(6)(A) A board shall hold an evidentiary hearing on  
17       a claim that presents a genuine issue of material fact, if  
18       requested by the claimant.

19           “(B) A board holding an evidentiary hearing shall  
20       have broad discretion (as specified in the procedures re-  
21       quired by paragraph (5)) to allow and limit discovery on  
22       matters covered by the hearing in order to expedite the  
23       hearing and action on the claim concerned.

1       “(C) A claimant may, at the election and expense of  
2 the claimant, be represented by outside counsel in connec-  
3 tion with an evidentiary hearing.”.

4       (f) FINAL DECISIONS OF BOARDS.—Such subsection  
5 is further amended by inserting after paragraph (6), as  
6 inserted by subsection (e) of this section, the following new  
7 paragraph (7):

8       “(7)(A) Each final decision of a board under this sub-  
9 section shall be made available to the public in electronic  
10 form on a centralized Internet website. In any decision so  
11 made available to the public—

12           “(i) there shall be redacted all personally identi-  
13 fiable information; but

14           “(ii) if the decision relates to or arises from an  
15 investigation under section 1034 of this title, there  
16 shall not be redacted the names and position of such  
17 categories of officers investigated, above the grade of  
18 lieutenant colonel (or commander in the case of the  
19 Navy and the Coast Guard) as the Secretary of De-  
20 fense or the Secretary of Homeland Security, as ap-  
21 plicable, shall prescribe in the procedures under  
22 paragraph (5).

23       “(B)(i) Under procedures jointly developed by the  
24 Secretaries of the military departments and the Secretary  
25 of Homeland Security, each final decision of a board shall

1 be characterized by the board as having precedential value  
2 or non-precedential value for purposes of subsequent deci-  
3 sions of boards under this section.

4       “(ii) For purposes of this subparagraph—

5           “(I) a decision having precedential value is any  
6 decision determined by a board in accordance with  
7 the procedures required by clause (i) to add signifi-  
8 cantly to the case law of boards under this section;  
9 and

10          “(II) a decision having non-precedential value is  
11 any decision that does not have precedential value.

12          “(iii) Any decision having precedential value for pur-  
13 poses of this subparagraph may be cited or referred to  
14 by any party in a claim under this section.”.

15       (g) JUDICIAL REVIEW OF DETERMINATIONS OF  
16 BOARDS.—Paragraph (8) of such subsection, as redesign-  
17 nated by subsection (b)(1) of this section, is further  
18 amended—

19           (1) by inserting “(A)” after “(8)”;

20           (2) in subparagraph (A), as so designated, by  
21 inserting “or subject to review or appeal as de-  
22 scribed in subparagraph (B)” after “Except when  
23 procured by fraud”; and

24           (3) by adding at the end the following new sub-  
25 paragraph:

1       “(B) A claimant may seek judicial review of a deter-  
2 mination of a board under this section in an appropriate  
3 court of the United States. The scope of judicial review  
4 under this subparagraph shall be as specified in section  
5 706 of title 5.”.

6       (h) TRAINING OF MEMBERS OF BOARDS.—

7           (1) IN GENERAL.—Not later than one year  
8 after the date of the enactment of this Act, each  
9 Secretary concerned shall develop and implement a  
10 comprehensive training curriculum for members of  
11 boards for the correction of military records under  
12 the jurisdiction of such Secretary in the duties of  
13 such boards under section 1552 of title 10, United  
14 States Code. The curriculum shall address all areas  
15 of administrative law applicable to the duties of such  
16 boards.

17           (2) UNIFORM CURRICULA.—The Secretary of  
18 Defense and the Secretary of Homeland Security  
19 shall jointly ensure that the curricula developed and  
20 implemented pursuant to this subsection are, to the  
21 extent practicable, uniform.

22           (3) TRAINING.—

23           (A) IN GENERAL.—Each member of a  
24 board for the correction of military records  
25 shall undergo retraining (consistent with the

1           curriculum developed and implemented pursuant  
2           to this subsection) regarding the duties of  
3           boards for the correction of military records  
4           under section 1552 of title 10, United States  
5           Code, at least once during the member's tenure  
6           on the board.

7                 (B) CURRENT MEMBERS.—Each member  
8                 of a board for the correction of military records  
9                 as of the date of the implementation of the cur-  
10                 riculum required by paragraph (1) (in this  
11                 paragraph referred to as the “curriculum imple-  
12                 mentation date”) shall undergo training de-  
13                 scribed in subparagraph (A) not later than 90  
14                 days after the curriculum implementation date.

15                 (C) NEW MEMBERS.—Each individual who  
16                 becomes a member of a board for the correction  
17                 of military records after the curriculum imple-  
18                 mentation date shall undergo training described  
19                 in subparagraph (A) by not later than 90 days  
20                 after the date on which such individual becomes  
21                 a member of the board.

22                 (4) REPORTS.—Not later than 18 months after  
23                 the date of the enactment of this Act, each Secretary  
24                 concerned shall submit to Congress a report setting  
25                 forth the following:

(B) A detailed description of the training curriculum required of such Secretary by paragraph (1).

18 SEC. 4. INCLUSIONS OF INSPECTORS GENERAL OF THE  
19                   MILITARY DEPARTMENTS AND CERTAIN  
20                   OTHER INSPECTORS GENERAL IN COUNCIL  
21                   OF THE INSPECTORS GENERAL ON INTEG-  
22                   RITY AND EFFICIENCY.

23       Section 11(b)(1) of the Inspector General Act of  
24 1978 (5 U.S.C. App.) is amended by adding at the end  
25 the following new subparagraph:

1           “(J) The Inspectors General of the Army,  
2           the Navy, the Air Force, the Marine Corps, the  
3           National Guard Bureau, and the Coast  
4           Guard.”.

